



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## AN INCOMPLETE JOURNEY OF A CRIMINAL AND A VICTIM – MARITAL RAPE

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The charter of United Nations of 1945 is one of the key guiding tools which emphasized on achieving proficiency in the field of proclaiming people's belief in human rights and dignity and provided them with fundamental guidelines and rights. It has always been one of the bedrocks and guiding factors in eulogising the existence of a dignified living standard while making legislatures and passing judgement.

You cooking with the same concocting matter the Indian constitution mandate every article of its detrending the violation of human rights and upliftment in the persona of a person. The state not only has to avoid itself in the welfare of human beings but is also advise to encourage and make laws which safeguard people. Since time in memorial the whole purpose and motive of certain laws was to bring a sense of equality in the society which was long bagged with regressive and patriarchal mindsets. The existence of such thoughts not only deplete the quality of life a woman sustains rather it encourages meant to come it cries which hampers the societal balance of peace and nonviolence. Article 15 (3) of the Indian constitution mentions that state shall make special loss for women and children they're by granting autonomy to the state to pass legislatures in quilling special rights for the class of people who have been a part of discrimination in the civilization. The union and State have always work together in bringing reformative laws for revitalising the status of women and glorifying the dignity and safeguarding their rights such instances include the immortal trafficking,

But one such filled where the prevalence of justice has placed a seed of lacuna is in the field of ensuring the safety of women from their own husband that is marital rape. Marital rape refers to a form of domestic violence which includes for sexual intercourse between spouses without their consent and free will.

### HISTORY OF MARITAL RAPE

THE SHADES OF MARITAL RAY AND PETROL KEY CAN BE TRACE BACK TO 1900 B E WHERE A PLACE NAME BABYLON MODERN DAY HILA IRAQ A MAN WAS SENTENCED TO DEATH IF HE FORCE SEX UPON ANOTHER MAN'S WIFE Or daughter.

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<sup>1</sup> <https://articles.manupatra.com/article-details/Marital-Rape-and-Law>

Surprisingly this was not bad by the concept of maliciously distorting of women in a store manner rather he was condemned and punished for vandalising someone's property that is crime was not committed against women but against a man's property.

Do the current legislation does not directly encourage in engaging in the ancient barbaric mind set where refers considered as a thread women faced from outside people and men or father or brother used to help or save them from this but it has failed to recognise the limitations and threads that can be caused to a woman by her husband.

## LEGAL PROVISIONS

Section 63 of the BNS describe the act of rape in 4 ways emphasising on the physically of the act whereas the consecutive substance come with situation scribing three important points that is that act should be called as rape if it is against her will or without her consent.

Exception 2 state that the actual not be considered rape is sexual intercourse is buying a man with his own one the white not bring under the area of 18 years does nonconsensual intercourse with wife above 18 years is not an open and shall not be treated as a statutory guilt of rape without consent contradicting the provisions mentioned in article 14 15 91 21 of the constitution.

The constitutionality of article 14 not hovering over the second exception to rape by creating unlike the artificial distinction between married and unmarried women since the same often should I have been tried as a rape case at the women unmarried but in the present case since she is unmarried does this implicate abandoned liberty and freedom to the husband to have nonconsensual sexual intercourse with the wife.

Second it also creates the disparity with respect to the definition of women in section 2 sub section 35 of bans which tells that women is a female of any age yet the provision exception to rape ambits only women below the age of 18 years. Further under searched provision it also immunizes married man from getting into allegations of compared unmarried men. Further it vindicates the vision of article 15 subsection 3 of the constitution which enables the parliament to make special provisions for women and children place at great disadvantage. Consecutively article 191 at which mandarins' freedom of thoughts and expression fails to apply to women who are victims of marital rape since they are not heard when their issues are expressed does making their expressions completely vague.

Article 21 guarantees protection to life which includes the right to dignity the right to livelihood and the right to healthy environment. This this article includes right to health as well the occurrence of such an act leads to not only unwanted pregnancy but also has a long-lasting effect on a women's mental health. A systematic database research from January 1945 to November 2020 with various data basis among a lot of key terms the key wants were marital rape spousal violence intimate partner violence married women Indian Indian southeast Asia depression PTSD and mental health in the above kiss no filters were applied. the program of action of international conference on population and development defined reproductive health as a state of complete physical mental and social welding and not only the absence of disease or informative in all matters relating to reproductive system and its functions and processes.<sup>2</sup>

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<sup>2</sup> as "Right to abstain" from consummation is a long-established principle of the Constitutional jurisprudence of India. 'Govind vs. State of M.P, AIR 1975 SC 1378'; 'Kharak Singh vs. State of U.P, AIR 1963 SC 1295.

These contractors the statue that gives women abortion rights but not reproductive rights.

The national family health survey has reported that over 80% women who are married and are victims of sexual violence report their current husbands as perpetrators 9% former husbands emphasising a huge legislative vacuum in the law-making process while considering the issue of marital rip which is not new but is persisting since ages.

In 2013 the 167 report of the parliamentary standing committee of the Rajya Sabha recorded that several members spelled at marital rip carried the potential to destroy the institution of marriage the question arising here is if every ingredient of rape is met in a circumstance then why is there an exemption in identifying rape as an offence by the husband does immunizing the husband from prosecutions for as other offences are concerned making an anomalous and standing making the husband charge lesser offences but not with a serious one such as rape.

A reference to the hill's principle was given in the judgement of independent thoughts versus union of India where sir Mathew hell the chief justice of England was<sup>3</sup> credited with having late down the principle where the husband cannot be guilty of rape committed by himself upon the lawful wife for their mutual matrimonial consent and contract the wife has given up herself in this kind into her husband which she cannot retract. Women at that time were treated as chattel. This principle even after it's non usage in today's date has indirectly made it existence redirecting the silence of a legislation over issues like marital rape does encouraging and aeronautical mindsets.

It is a matter of fact that legislature enact the law and if in any way it is violative of the fundamental rights of citizen then it is the duty of the court to upward the sanctity of the justice system and if it turns the blind eye to it then it shall be considered as a failure of the court for not striking down the law which is not falling within the corners of the constitution. The Indian judiciary has significantly evolved in its interpretation of Article 21 of the Constitution, especially when it comes to personal liberty, privacy, and bodily autonomy. A series of landmark judgments have laid the foundation for a rights-based approach that protects individuals—particularly women—in matters relating to sexuality, consent, and reproductive choices.

In *State of Karnataka vs. Krishnappa*<sup>4</sup>, the Supreme Court made a strong statement against sexual violence. The Court observed that such acts are not just physically brutal but also deeply violate a woman's sense of privacy and dignity. It held that **non-consensual sexual intercourse is not only a form of physical assault but also constitutes sexual abuse**, thereby infringing on a woman's fundamental right to live with dignity. This judgment marked an important step in recognizing that sexual violence is not only a criminal offense but also a violation of constitutional rights.

Building on this, the Court in *Suchita Srivastava vs. Chandigarh Administration* highlighted the importance of a woman's right to make choices concerning her body. The case involved the issue of forced abortion of a mentally challenged woman. The Supreme Court held that **a woman's right to make reproductive choices is a part of her personal liberty, dignity, and bodily integrity** as guaranteed under Article 21. The Court emphasized that decisions related

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<sup>3</sup> The State of Karnataka vs. Krishnappa, (2000)4 SCC 75

<sup>4</sup> State of Karnataka vs. Krishnappa

chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://jajharkhand.in/wp/wp-content/judicial\_updates\_files/07\_Criminal\_Law/50\_sentencing/The\_State\_Of\_Karnataka\_vs\_Krishnappa\_on\_30\_March,\_2000.PDF

to sexual activity, motherhood, and abortion must be left to the individual. It stressed that even women with mental disabilities are capable of making such choices unless proven otherwise. This was a landmark judgment that brought reproductive autonomy under the fold of fundamental rights.

The understanding of privacy and personal autonomy received its most powerful endorsement in the historic case of *Justice K.S. Puttaswamy (Retd.) vs. Union of India*<sup>5</sup>. In a unanimous decision by a nine-judge bench, the Supreme Court held that **the right to privacy is a fundamental right under Article 21**. It further clarified that this right includes **the freedom to make personal decisions about intimate aspects of life, including sexual orientation, reproductive choices, and bodily autonomy**. The Court stated that privacy is not just about being left alone, but about having the freedom to make decisions that shape one's identity and life, free from unnecessary interference by the State.

Taken together, these three landmark rulings paint a clear picture: **Article 21 is not limited to mere survival but guarantees the right to live with dignity, freedom, and self-determination**. It protects a person's ability to make autonomous decisions regarding their own body, their relationships, and their future. These cases have especially strengthened the constitutional position of women, ensuring that their sexual and reproductive rights are not just moral considerations but **legally protected entitlements** under the Indian Constitution.

This evolving jurisprudence marks a progressive shift toward recognizing **sexual and bodily autonomy** as inseparable from the idea of a life lived with dignity—a right guaranteed to every individual in India.<sup>6</sup>

The issue of **marital rape** and its potential criminalisation has been the subject of much legal and political debate in India. Despite increasing calls for reform, the government has consistently hesitated to take a definitive stand. In 2015, the matter came to the forefront once again when a Member of Parliament introduced a private bill proposing to criminalise marital rape. However, the Ministry of Home Affairs, in its official response, stated that the concept of marital rape, as understood in many other countries, was not applicable in the Indian social context.

The Ministry's press release made it clear that the government viewed **marriage as a sacrament**, deeply rooted in cultural and traditional values, and claimed that societal norms did not yet align with the criminalisation of sexual acts within marriage. This reasoning revealed a larger issue—the reluctance to question or challenge deeply embedded patriarchal structures within the institution of marriage. The justification that Indian society was not ready to accept such a law exposed the government's cautious, and arguably conservative, approach toward redefining consent within a marital relationship.<sup>7</sup>

Later that year, in December 2015, the private member's bill proposing the criminalisation of marital rape was formally introduced in Parliament. During the discussions that followed, the then Union Home Minister stated that the issue was under consideration by the **Law Commission of India**, and that the government would not take any steps until the Commission submitted its report. Interestingly, instead of acknowledging the absence of a specific legal remedy for non-consensual sex within marriage, the Home Minister pointed to **Section 498A of the Indian Penal Code**, which deals with cruelty by a husband or his relatives, as an existing safeguard for women.

This response raised significant concerns, as cruelty under Section 498A does not specifically address **sexual violence within marriage**, nor does it acknowledge the importance of consent in a spousal relationship. The framing of marital rape as merely a form of general cruelty

<sup>5</sup> Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.

<sup>6</sup> Independent Thought v. Union of India

<sup>7</sup> E.P. Royappa v. State of Tamil Nadu

undermines the serious physical and psychological harm it causes, and denies survivors a clear legal recourse.

The discussion resurfaced again in 2016 when the Home Minister was asked whether the government planned to abolish the **marital rape exception under Section 375 of the IPC**. Once again, the response was vague. It was reiterated that the Law Commission was examining the issue and that no steps had been taken toward criminalising marital rape, as the **Parliamentary Standing Committee had advised against it**.

This prolonged inaction reflects a deeper discomfort within the legal and political establishment when it comes to recognising **women's right to bodily autonomy and sexual consent within marriage**. While many countries have acknowledged marital rape as a criminal offence, India's stance remains non-committal, rooted in traditional notions of marriage that prioritise the sanctity of the institution over individual rights.

Until the law evolves to treat **all forms of non-consensual sex as violations**, regardless of the marital status of the parties involved, the struggle for gender justice and equality in India remains incomplete.

One of the key arguments often put forth against criminalising marital rape is the need to protect the institution of marriage for the stability of society. However, this line of reasoning is fundamentally flawed. Prioritising societal image or marital stability over the physical, emotional, and psychological well-being of women is deeply unjust. The harms caused to women in abusive marriages, especially where sexual violence is present, are far more severe than the perceived harm caused by a "broken marriage." In fact, by enacting laws such as the **Protection of Women from Domestic Violence Act, 2005**, and criminalising cruelty under **Section 498A of the Indian Penal Code**, the Indian State has implicitly recognised that preserving the institution of marriage cannot override the fundamental rights and dignity of individuals within that institution.

This conservative approach only reinforces the outdated public-private divide, where violence within the home is seen as a "private matter." Such an approach is incompatible with modern constitutional values. The idea that married women can be treated differently from unmarried women in matters of sexual violence is not only irrational but also fails the test of equality under **Article 14** of the Constitution. As per the law laid down in *E.P. Royappa v. State of Tamil Nadu*<sup>8</sup>, any classification must not only serve a legitimate purpose but must also be non-arbitrary.

In *Independent Thought v. Union of India*, the Supreme Court partially struck down the marital rape exception in Section 375 of the IPC with regard to minor girls. The Court held that under the **POCSO Act, 2012**, sexual intercourse with a girl under eighteen is a criminal offence, irrespective of her marital status. The exception clause, which allowed intercourse with a minor wife aged fifteen to eighteen, was deemed unconstitutional. This judgment is significant because it acknowledges that marriage cannot be a shield against the enforcement of fundamental rights, especially when it comes to bodily autonomy and dignity. Although the Court clarified that its verdict was not intended to address adult marital rape, the underlying principle was clear: **consent cannot be presumed simply because a woman is married**.

Arguments against criminalisation often claim that remedies already exist under laws like Section 498A. However, this is misleading. Cruelty and rape are fundamentally different crimes. Rape is a grave violation of bodily autonomy and integrity, rooted in power and control. Treating it as a mere form of cruelty erases the specific and brutal nature of sexual violence. Rape also requires a different evidentiary approach and carries distinct legal consequences.

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<sup>8</sup> E.P. Royappa v. State of Tamil Nadu

Moreover, the aim of criminalising marital rape is not merely to punish, but to recognise the act as a constitutional and legal wrong. Suggesting alternative legal pathways only distracts from the core issue—**that every woman, regardless of her marital status, has the right to say no**. Not recognising this within the criminal justice system is arbitrary, discriminatory, and unconstitutional. To begin with, there is no fixed or universally accepted definition of "cruelty" under Indian law. **Section 498A of the Indian Penal Code** provides an explanation of what may constitute cruelty, but its actual application is largely dependent on the specific facts and circumstances of each case. What qualifies as cruelty in one marriage may not be the same in another. This is because the dynamics of a matrimonial relationship are deeply personal and shaped by several factors such as the nature of the couple's relationship, their cultural background, socio-economic conditions, emotional compatibility, mental health, and patterns of daily interaction.

Importantly, **mental cruelty**, which is recognised as a form of cruelty under this section, is even more subjective. Its impact depends heavily on the psychological makeup of the individual concerned—their sensitivity, resilience, and ability to cope with distress. Courts have consistently held that mental cruelty must be assessed in light of the context and intensity of the suffering, and not based on a fixed standard. This deliberately broad framework is meant to accommodate the unique nuances of each case.

However, **this fluidity also presents a significant challenge** when it comes to addressing cases of **marital rape** under Section 498A. We argue that **rape, even within marriage, cannot be comfortably subsumed within the existing definition of cruelty**, for three critical reasons:

1. **The nature of the offence is fundamentally different.** While cruelty may include a range of abusive behaviour, rape is a direct and violent assault on bodily autonomy and sexual integrity.
2. **Rape has distinct legal and evidentiary requirements**, separate from those applicable to cruelty, making it inappropriate to collapse both under a single provision.
3. **Treating rape as a subset of cruelty trivialises the specific trauma and gravity of sexual violence**, and fails to give survivors the legal recognition and redress they deserve.

Thus, while Section 498A serves an important role in protecting women from domestic violence, it is **inadequate and inappropriate as a substitute for the specific criminalisation of marital rape**.

## CONCLUSION :

The discussion around **marital rape** is central to the pursuit of **substantive equality for married women**, who have historically been sidelined in legal and public narratives, often reduced to the private space of the home. Despite the Indian Constitution guaranteeing all citizens the right to equality, personal liberty, and dignity, the continued existence of the **marital rape exception under Section 375 of the Indian Penal Code** exposes a glaring contradiction in our legal system. This exception denies married women the same protection against sexual violence that is available to unmarried women, thereby undermining the very essence of equality and autonomy enshrined in **Articles 14 and 21** of the Constitution.

As our analysis has shown, arguments resisting the criminalisation of marital rape are deeply embedded in patriarchal notions of marriage and gender roles. These arguments often romanticise marriage as a sacred institution and assume consent to sex as an ongoing marital obligation. However, such reasoning has no constitutional justification. In fact, this perspective ignores the reality that **marriage does not, and should not, extinguish a woman's right to her own body.**

Moreover, cultural resistance cannot serve as a legitimate excuse for denying legal protection. Legal reforms have historically led social change, not the other way around. Waiting for unanimous cultural acceptance before introducing progressive legislation is a strategy that only serves to delay justice. Laws should reflect **constitutional morality**, not majoritarian sentiment.

We have also addressed the misconception that existing legal remedies, such as **Section 498A of the IPC** or civil provisions under the **Protection of Women from Domestic Violence Act, 2005**, are adequate to cover cases of marital rape. These provisions do not capture the specific and grave nature of non-consensual sex within marriage. Rape is a violation of bodily autonomy and carries serious psychological and physical consequences that go far beyond the scope of cruelty or domestic violence.

In light of this analysis, it is clear that **Section 375 of the IPC needs urgent reform.** We propose a four-part model for criminalising marital rape in India:

1. **Remove the exception clause** that excludes marital rape from the definition of rape under Section 375.
2. **Clarify in the statute** that the relationship of marriage shall not be a defence in cases of rape. Consent must be valid and ongoing, regardless of marital status.
3. **Apply the same sentencing policy** to marital rape as to non-marital rape, ensuring equal punishment for equal harm.
4. **Introduce amendments to the Indian Evidence Act** that account for the unique challenges faced by survivors of marital rape in proving their case, such as the lack of physical evidence or delayed reporting due to marital coercion or dependence.

Criminalising marital rape is not merely a legal reform—it is a **moral and constitutional imperative.** If the law continues to ignore the violation of consent within marriage, it sends a clear message: that a woman's autonomy ends at the altar. It is time for the law to affirm that **consent is not a privilege—it is a right**, and marriage does not dilute that right.